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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 228th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 November 1995, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.228/Add.1.

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. The CHAIRMAN invited the High Commissioner for Human Rights to address the Committee.

2. Mr. AYALA LASSO (High Commissioner for Human Rights) said that the current session of the Committee coincided with an unprecedented financial crisis in the United Nations due to the non-payment of their contributions by certain Member States. The Organization had had to cut back on many of its activities in order to confront that crisis. None the less, given the importance of the work of the treaty-monitoring bodies, and particularly the Committee against Torture, he had personally seen to it that its activities would not be affected by the recent budget cuts. He and the secretariat would make every effort to ensure the best possible conditions for the Committee's current session and future activities

3. Summarizing relevant developments since the Committee's previous session, he referred to the Fourth World Conference on Women, which he had attended, along with Mr. Fall, Assistant-Secretary-General for Human Rights, and several staff members of the Centre for Human Rights, in order to affirm the priority they attached to the full integration, without discrimination, of the fundamental rights of women and to their integration into the major activities of all United Nations bodies. The Conference had stressed the numerous obstacles that women continued to encounter in the enjoyment of their rights and had insisted on the fact that equality between men and women had still not been fully achieved. In keeping with the instruments adopted by the World Conference on Human Rights, the Beijing Declaration and Platform for Action reaffirmed the fundamental principles of the indivisibility and inalienability of the rights of women and the girl child, which were an integral part of universal human rights.

4. The main objective was to promote the establishment of a new partnership between men and women based on the sharing of power and responsibilities in order to ensure that women played an active role in all domains of public and private life. That, of course, implied that the interests of women should be effectively taken into account both at the national level and in United Nations bodies, particularly those working to secure respect for, and protection of, all human rights. The treaty-monitoring bodies had a priority role to play in that regard, in that they systematically monitored the protection of rights in all States parties to the treaty in question. The meeting of persons chairing the human rights treaty bodies had in fact made a number of proposals in that regard.

5. The sixth meeting of chairpersons had been held at Geneva from 18 to 22 September and had been attended by the Chairman of the Committee, among others. He would therefore mention only briefly some of the issues which had been discussed and on which recommendations had been made. The meeting had considered the question of the equality and fundamental rights of women and had endorsed the recommendations of an expert meeting held on that subject at Geneva in July 1994. During the meeting, he had organized a general discussion on the role to be played by the treaty-monitoring bodies in the

areas of advisory services and technical assistance to States parties. Procedures had already been set up to enable the competent branches of the Centre for Human Rights to be kept informed of requests made by the various committees, particularly through suggestions and recommendations in the conclusions they addressed to States parties after consideration of their reports. He encouraged the Committee to make even greater efforts in that connection and, where possible, to indicate whether advisory services or technical assistance were desirable for States whose reports were under consideration and, if so, what sort of assistance should be envisaged.

6. Discussions had also been held on human rights education and the type of contribution the treaty-monitoring bodies might make. He welcomed the fact that the Committee took every opportunity to stress the need for setting up education, information and training programmes on the prohibition of torture for medical personnel, judges, law enforcement officials, and members of police forces, prison staff and the armed forces. The chairpersons had also affirmed the need for greater interaction between the treaty-monitoring bodies established within the United Nations system and the regional bodies. They had also stressed the need for greater cooperation among the treaty-monitoring bodies themselves and between those bodies and the non-treaty machinery.

7. Summing up recent activities of some of the treaty and non-treaty bodies working to combat torture, he said that the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture had held its fourteenth session at Geneva from 15 to 24 May. The total amount of contributions available to the Board for assistance projects for torture victims had been $2.7 million. However, requests for funding of assistance to torture victims had totalled more than $6 million, for 112 projects; 28 new requests had come from humanitarian organizations and 5 from torture victims themselves. Despite the financial crisis currently affecting the Fund, the Board had committed itself to honouring some 40 per cent of each request for funds that met its criteria. In addition, the Board encouraged closer cooperation between the Fund and the specialized agencies and other bodies, such as WHO, UNDP and UNHCR, with the aim of defining a common strategy for assisting victims of torture.

8. Mr. Rodley, Special Rapporteur of the Commission on Human Rights on questions relating to torture, had in 1995 received a very large number of communications alleging torture. Since the beginning of 1995, Mr. Rodley had transmitted 92 urgent appeals to the authorities in 37 countries concerning individuals who had allegedly been tortured or with regard to whom fears of torture had been expressed, generally during their incommunicado detention or interrogation. Mr. Rodley had also sent 54 letters to 48 Governments to inform them of allegations of torture which he had received and which concerned them. He had travelled to Chile in August 1995 at the invitation of the Chilean Government, and, in the course of his interviews with the Chilean authorities, had several times referred to the Committee's conclusions and recommendations adopted after its consideration of the second periodic report of that country in November 1994.

9. The working group of the Commission on Human Rights on the draft optional protocol to the Convention had recently completed its fourth session. The group had continued its first reading of the draft protocol, and Mr. Sorensen, who had participated in some of its meetings, would certainly give the Committee more details.

10. Regarding the proposed restructuring of the Centre for Human Rights, the previous day he had reported to the Centre and to Member States on the analysis of the first phase of the restructuring recommended by the consultants, which took into account all the needs of the various bodies, instruments and committees. The proposed changes in no way entailed the abolition of any unit but, on the contrary, had the sole purpose of providing more efficient, timely and dynamic services. In particular, the communications branch would be improved.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Second periodic report of Denmark (CAT/C/17/Add.13; HRI/CORE/1/Add.58)

11. At the invitation of the Chairman, Mr. Mikaelsen, Mr. Reimann, Mr. Hendriksen, Ms. Cohn, Ms. Schouenborg and Mr. Frederiksen took seats at the Committee table.

12. Mr. MIKAELSEN (Denmark), introducing his country's second periodic report (CAT/C/17/Add.13), apologized for the fact that the report, which had been due on 22 June 1992, had unfortunately not been submitted to the Centre for Human Rights until 22 February 1995. The report supplemented Denmark's initial report, which had been introduced in 1988 and considered by the Committee in 1989. In the second report, a number of references were made to the initial report. He drew the Committee's attention to the fact that in 1995 the Government had submitted a 21-page core document (HRI/CORE/1/Add.58), which represented a part of Denmark's reporting to the Committee. In drafting the second report, Denmark had chosen to illustrate new developments through comments on specific cases, as recommended by the Committee. There had been further developments subsequent to the submission of the written report in February 1995, such as the July 1995 amendment of the rules on filing complaints against the police.

13. Mr. EL IBRASHI (Country Rapporteur) said that he would welcome clarification from the State party on three main issues: questions regarding the 1995 report; articles of the Convention and their implementation in the Danish legal system; and information received from NGOs. Paragraph 36 of the core document referred to the role of Ombudsman, but it was not clear what kind of cases the Ombudsman had reported on and what the outcome of his reports had been. Paragraph 67 stated that prosecution of crimes was generally left to the Public Prosecutor, except for a few special crimes, such as defamation, where it was up to the victims to instigate criminal proceedings on their own. It further stated that in criminal proceedings the court could award the victim of the crime damages if the victim had submitted a request that the court do so. What were the criteria with regard to compensation for criminal and civil courts? What was the relationship between the two types of request for damages? And what were the respective ceilings

for damages awarded by the criminal courts and the civil courts? Could a victim receive compensation both from the perpetrator and from the State? And what happened if the perpetrator did not have sufficient financial resources?

14. One question that had already been raised in the report of the Council of Europe concerned the way in which complaints against the police were handled. In such cases, it was of overriding importance that any investigation should be carried out by an independent authority; a police investigation was not satisfactory. As mentioned in certain NGO reports, some victims were afraid to lodge complaints with the police.

15. It did not seem that the Convention against Torture had been incorporated into Denmark's legislation: it had been stated at some point that Denmark might consider taking that step, but he wanted to make certain that the Convention was applied by the courts automatically.

16. Turning to a number of individual articles discussed in Denmark's second report, he noted with regard to article 1 that Danish domestic legislation contained no definition of torture - a situation which was by no means unique to Denmark and did not mean that Denmark was failing to comply with the provisions of the Convention. Nevertheless, the Committee would have preferred to see the definition as it stood in the Convention introduced into domestic law. According to one NGO report, in some cases a very restricted definition of torture was applied. If the definition was made part of Denmark's legislation, it would be very useful to Danish judges, who might otherwise depart from it.

17. Concerning article 2 of the Convention, he asked what effective legislative, administrative, judicial or other measures had been taken to prevent acts of torture. In particular, no reference had been made in the second report to article 2, paragraph 3. Had there been any cases of a superior officer giving an order at variance with the Convention, which therefore had not been obeyed?

18. With regard to article 3, had there been any cases in which Denmark had refused to expel a person because there were substantial grounds for believing that he would be in danger of being subjected to torture?

19. On article 10 of the Convention, he sought further information about the role of schools and universities in ensuring that education and information regarding the prohibition against torture were fully included in the training of law enforcement personnel. If a person who had accused a police officer of torture or abuse instituted criminal proceedings, which were then rejected, could he still initiate civil proceedings? What was the role of civil proceedings, and were they bound by the outcome of the criminal proceedings?

20. The representative of Denmark had spoken in his presentation of a review of police regulations and guidelines. He wondered whether they had been finalized and, if so, whether they had been approved and were being enforced. He also inquired which of the recommendations made by the Council of Europe in that regard had been introduced.

21. Turning his attention to the October 1995 report of Amnesty International on Denmark, he said that there was still some confusion in his mind about the different forms of "leg-lock" used to restrain detainees. It seemed clear that a doctor needed to be present so as to monitor the pulse and respiration of any detainee so restrained.

22. A country's system of detention was of crucial importance, yet he found no mention in the report of how long a person could be held in custody, what rules existed for the treatment of detainees, or even whether detainees had the right to see a doctor, a lawyer or family members or to be properly fed. That issue had also been raised by Amnesty International, and a recommendation in that regard was contained in the report of the Council of Europe.

23. Page 3 of the report of Amnesty International also referred to prolonged and indefinite periods of imprisonment for Greenlanders in Denmark, and said that the Danish Government and the Greenland Home Rule Government had set up a commission to review and make recommendations for revision of Greenland's legal and criminal justice systems. He would like to know the outcome of the work of the commission, which had been in existence for almost two years.

24. In connection with a point made on page 5 of Amnesty International's report, he sought clarification as to the powers of the regional police complaints boards and the regional State prosecutors and asked whether a victim could lodge a complaint directly with the regional State prosecutor. If so, why would that victim want to lodge a complaint with the chief constable, which might only cause difficulties for the victim in the future.

25. He requested the Danish delegation to provide details about the recently passed law creating a new system for handling complaints about police conduct and would also like to know more about the police complaints board and the State prosecutor's role.

26. He inquired whether there had been an investigation into the events of the night of 18-19 May 1993 in the Nørrebro district of Copenhagen and what the outcome had been. Page 7 of Amnesty International's report made mention of a review of regulations for law enforcement officials on the use of force. Would a new system be replacing the old? That there was a gap between police training and practice was evidenced by the cases of "Mrs. Andersen" and Benjamin Schou, referred to on page 20 of Amnesty International's report.

27. In its report of July 1991, the Council of Europe's Committee for the Prevention of Torture (CPT), while finding no evidence of torture in Danish prisons and police stations, had made a number of comments and recommendations. It had referred to the system of isolation and detention of prisoners. Was that system still applicable? The CPT had sought statistics on the number of remand prisoners and on the special security cells for the temporary holding of violent persons. What were the rights of persons placed in custody? The report had discussed the duration of detention on remand; during a visit, the CPT had come across numerous cases of detention on remand varying from six months to over two years. The CPT had also stressed the importance of access to legal counsel.

28. He hoped that the Danish delegation would be able to report to the Committee on those comments and on the extent to which the recommendations had been implemented.

29. Mr. REGMI (Alternate Country Rapporteur) thanked the delegation of Denmark for the outstanding second periodic report and oral presentation. The establishment of the Rehabilitation and Research Centre for Torture Victims (RCT) was an exemplary initiative. The work of the RCT was a source of deep satisfaction to the Committee.

30. Paragraph 9 of the second report stated that there had been no changes in legislation or practice in relation to articles 1 to 4 of the Convention against Torture. When Denmark had submitted its initial report to the Committee, it had been urged to consider legislation to make torture a crime under its own domestic law. Legal certainty required clear definitions.

31. Paragraph 103 of the core document (HRI/CORE/1/Add.58) stated that Denmark had a "dualist" system, under which international agreements to which Denmark became a party were not automatically incorporated into domestic law. As the Convention was not expressly incorporated into national legislation, a person who had committed the crime of torture could not be properly prosecuted. The Danish Criminal Code did not specifically define a crime of torture within the meaning of article 1 of the Convention, nor did it indicate an appropriate punishment. Denmark had, however, taken the positive step of ratifying the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, on the abolition of the death penalty, which was undoubtably cruel and inhuman punishment.

32. A number of inhuman, cruel or degrading practices persisted in Denmark, such as solitary confinement and the use by the police of the "leg-lock" to restrain detainees. He would like to know what the maximum period of confinement was, where persons were confined and who was responsible for inspecting places of confinement. Under what conditions had the "leg-lock" been applied? It was not clear from the report whether the use of that cruel practice had been permanently abolished or merely suspended. What was the procedure for lodging a complaint for a person who alleged that he had been subjected to torture? How could the torture victim obtain adequate compensation? What was the maximum compensation to which the victim was entitled? In the event of the victim's death as a result of torture, could his dependants claim compensation? The second periodic report stated that a person subjected to torture had the right to claim compensation from the torturer and that the aggrieved party might receive compensation from the State if the perpetrator was not found or did not have enough money to pay compensation. It was difficult to see how it was possible that compensation could be granted by a party other than the perpetrator. How was it decided whether the perpetrator had enough money to pay compensation?

33. He sought further information about the judicial system in Denmark, for example whether the Supreme Court was empowered to declare a law unconstitutional and void. Was there any case law on the subject?

Amnesty International had reported on many cases of alleged ill-treatment by the police. How many actual cases had there been? Had compensation been paid in every instance? And what was the current situation?

34. Mr. BURNS joined the country rapporteurs in thanking the Danish delegation for presenting its second periodic report. It was only fair to point out that of those States that had ratified the Convention, Denmark was at the forefront in terms of its commitment to the values contained therein; it had, in particular, ratified articles 21 and 22 of the Convention and was a regular contributor to the United Nations Voluntary Fund for Victims of Torture. Denmark was unique in its active involvement in educational programmes on torture and in the way it provided resources for the rehabilitation of torture victims. Since the end of the Second World War, Denmark had also been a pioneer in developing human rights standards.

35. It was therefore all the more shocking to be confronted by a report such as that from Amnesty International that claimed to reveal casual police brutality in dealing with Danish citizens and with non-Danes entering the country either for immigration or asylum purposes and, in one case as a tourist. It appeared that one of the worst features of police practice, the fixed leg-lock, was no longer part of their technique, but the non-fixed leg-lock had not been eliminated and he wondered whether that was still necessary.

36. He endorsed the concerns of Mr. El Ibrashi concerning the type of restraint which involved handcuffing a person behind his back and then forcing his arms up so that considerable nerve damage, temporary and permanent, might result; that was a particularly painful and brutal act by the police which should be used only in the most extreme circumstances.

37. Among the case studies mentioned in the Amnesty International report, the Fatty case gave cause for particular concern, even though the treatment had not constituted torture as defined by the Convention. Nevertheless, if Mr. Fatty, having exhausted local remedies, were to bring a complaint before the Committee, assuming that the facts alleged in the statement were correct, it was inconceivable that the Committee would not find that there had been cruel treatment. In fact, it was impossible to conceive of less striking treatment within the category of cruel treatment not amounting to torture. It was disappointing, therefore, that the magistrate had not provided an analysis of the basis for his finding.

38. He asked whether the delegation could provide the Committee with information indicating the number of prosecutions of police officers over the past three years for alleged brutality against citizens or, in the absence of prosecutions, on any disciplinary proceedings which had been brought against officers in the same circumstances.

39. The concept of isolation on remand, which differed from solitary confinement in that it allowed access to a lawyer but not to other prisoners, family or friends, was another cause for concern. He wondered who exercised discretion as to whether or not a person should be placed in isolation on

remand, and whether the decision was subject to judicial review. What were the statutory rules relating to such remand and what was the ultimate remand period?

40. With regard to compensation for legal aid and the comment that legal aid was available to anyone charged with an offence but repayable by the guilty, he took it that legal representation was not regarded in Denmark as being part of the social safety net. He wondered whether persons who had not had legal-aid representation but had hired their own lawyer to establish their innocence were able to obtain compensation from the State to cover those costs and whether all the costs were recoverable.

41. Mr. GIL LAVEDRA, endorsing the comments made by other Committee members, asked how the training of law enforcement officials was carried out, especially in the light of the brutal police practices described in the NGO reports. How did Denmark envisage establishing investigative machinery by independent bodies to stop police abuse? And what measures had been adopted following the recommendations by the CPT?

42. Mr. SLIM asked how the Danish Constitution dealt with problems which fell between treaty law and domestic legislation, whether there was a hierarchical relationship between the two systems and whether treaty law prevailed over domestic law. Were the treaty provisions incorporated into domestic legislation properly respected? And if the two conflicted, did judges ever refuse to give precedence to international law?

43. The CHAIRMAN, endorsing the tributes of Committee members for the written and oral reports by Denmark, asked whether the number of torture victims dealt with by the RCT was declining or increasing.

44. In the absence of further questions, he thanked the Danish delegation for its cooperation and looked forward to hearing its replies later in the day.

The public part of the meeting rose at 11.45 a.m.